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Abstract | This study aimed to establish the rates and predictors of mental health diversion for, and the rates and predictors of post-diversion reoffending by, First Nations people.

Data from the NSW Statewide Community and Court Liaison Service were used to determine the rates, predictors and outcomes of diversion for 6,188 individuals.

First Nations people were significantly less likely to be granted diversion. Among First Nations people, diversion rates were higher for women, those living in less disadvantaged areas, those with a common mental health disorder, those charged with a violent offence and those without a prior offending history. Individuals who were diverted were significantly less likely to reoffend.

Access to and outcomes of mental health court diversion for First Nations people

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Introduction

People living with mental illness are at increased risk of contact with the criminal justice system (Fazel & Seewald 2012; Yee et al. 2024). Many jurisdictions have legislatively supported programs that can divert people in these circumstances away from the justice system and into appropriate treatment and support. Court-based mental health diversionary programs offer an alternative to receiving a punitive sanction. Mental health court diversion aims to address unmet mental health need and thus the underlying causes of justice contact. Existing research highlights the benefits of mental health court diversion, including a reduction in reoffending rates and improved social outcomes (Albalawi et al. 2019; Gaskin et al. 2024; Lim & Day 2014; Soon et al. 2024).

In New South Wales, mental health diversion in the Local Court is governed by the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA). Under the MHCIFPA, mental health diversion is granted by magistrates by way of a section 14 order (community-based diversion) or section 19 (hospital inpatient-based diversion). This legislation replaced the *Mental Health (Forensic Provisions) Act 1990*, which used section 32 and 33 orders to divert offenders. The new legislation also extended the period of enforcement for section 32/14 orders from six to 12 months and introduced a list of factors that magistrates may consider when making diversion decisions.

The NSW Statewide Community and Court Liaison Service (SCCLS) assists Local Court magistrates to make decisions about mental health diversion by providing mental health assessments for defendants charged with non-indictable offences (Bradford & Smith 2009). Local Court magistrates exercise a considerable degree of discretion in making decisions under the MHCIFPA, balancing the need for defendants to be subject to the law and ensuring that those with mental illness receive appropriate treatment to protect the community (Fernandez 2007, cited in Macdonald, Weatherburn & Lappin 2024; Gotsis & Donnelly 2008, cited in Macdonald, Weatherburn & Lappin 2024). Section 15 of the MHCIFPA sets out a range of factors that magistrates may consider when making decisions regarding diversion, including the nature and seriousness of the alleged offence, the defendant's criminal history, the nature of the defendant's mental health or cognitive impairment, whether the defendant has received any prior diversions, and any other relevant factors.

First Nations people have been found to be less likely to be granted mental health court diversion, despite their over-representation in the criminal justice system and hyper-incarceration (eg Albalawi et al. 2019; Soon et al. 2024, 2018). The lower rates of diversion for First Nations people suggest that they may face specific barriers to accessing diversion. First Nations people also experience less favourable reoffending outcomes following diversion than non-First Nations people (eg Albalawi et al. 2019; Bradford & Smith 2009; Soon et al. 2024), implying a major failure of systems and services in responding to the needs of First Nations people and communities.

To address this apparent disparity in access and outcomes for First Nations people deemed eligible for mental health court diversion in New South Wales, there is a need to co-design and implement culturally safe and evidence-based approaches.

The current study

Using routinely recorded data from the NSW SCCLS on individuals in New South Wales deemed eligible for diversion, linked to statewide justice records, the study's primary aim was to determine the relative rate of mental health court diversion for First Nations people and to identify the sociodemographic, clinical and forensic factors that contribute to any differences found. An additional aim was to determine the rates and predictors of reoffending for the sample.

Methodology

Sampling and data collection

The study used data collected by the NSW SCCLS on those who were seen by the service between 1 July 2008 and 30 June 2022 and deemed to be eligible for mental health court diversion. The SCCLS clinician assessed eligibility for diversion and deemed defendants eligible if they had a mental health or cognitive impairment. SCCLS clinicians operating out of Local Courts across New South Wales collected data on sociodemographic characteristics, clinical information and the result of their eligibility assessment for each individual. Individuals were included in the study sample if they were aged at least 18 years and had been assessed by an SCCLS clinician as being eligible for any type of mental health court diversion under the MHCIFPA.

SCCLS clinicians identified 16,217 individuals as eligible for diversion on at least one occasion during the study period. For those with multiple service contacts recorded in the dataset, the most recent contact was selected for analysis, to ensure that analyses reflect individuals' current mental health status. The SCCLS dataset was matched to the NSW Bureau of Crime Statistics and Research (BOCSAR) Reoffending Database (ROD), with linkage conducted by the NSW Centre for Health Record Linkage using key identifying information for the cohort members (eg name, date of birth and criminal justice record number). The BOCSAR ROD contains detailed information on criminal charges, convictions and mental health dismissals for finalised court appearances in New South Wales. Data from the ROD were obtained for the period 1 July 2008 to 31 December 2022. The final sample for the study comprised the 6,188 individuals identified as having a documented index offence in the BOCSAR ROD and a relevant SCCLS contact at which they were deemed eligible for either a community-based or hospital inpatient-based mental health diversion.

Diversion status, reoffending and covariates

Diversion status and reoffending were the primary outcome variables for the study. Individuals were coded as being diverted if they had a confirmed court diversion under sections 32/14 (community-based diversion) or 33/19 (hospital inpatient-based diversion) recorded in the SCCLS dataset within the study period. 'Reoffending' was defined as any proven finalised charge where the offence occurred after the index court finalisation date where diversion was considered. Cohort members were followed from the court finalisation date for their index offence until their first incident of reoffending recorded in the ROD or the end of the follow-up period (31 December 2022), whichever came first.

Study covariates included First Nations status, age, sex, location, offence type, mental health diagnosis, legal representation and prior offending. Cohort members were coded as having a First Nations background if they were identified as Aboriginal and/or Torres Strait Islander in either the SCCLS dataset or the BOCSAR ROD. Age at the time of assessment by the SCCLS clinician was categorised into three age groups (18 to 29 years, 30 to 39 years, 40 years and over). Clinicians determined cohort members' primary mental health diagnosis and recorded their conclusions according to the ICD-10 classification system. Diagnoses were then grouped into broader categories for analysis: serious mental disorders (eg schizophrenia-related disorders and bipolar affective disorder), personality or substance use disorders, and common or other mental disorders (eg depressive, stress-related somatoform and affective disorders; Soon et al. 2024).

Criminal charges obtained from the BOCSAR ROD were classified according to the Australian and New Zealand Standard Offence Classification system (Australian Bureau of Statistics (ABS) 2023a). Offences were further defined as 'violent', 'non-violent' or 'minor' offences. Violent charges included offences such as acts intended to cause injury and sexual assault, while non-violent charges included offences such as theft, fraud and property damage. Minor offences included traffic offences and vehicle-related offences (Soon et al. 2024). Prior offending was defined as when the individual had any proven finalised charges recorded as occurring before the index offence date corresponding with SCCLS contact.

The BOCSAR ROD also contained information on socio-economic status and residential remoteness. The socio-economic status of cohort members was defined according to their Socio-Economic Index for Area (SEIFA; ABS 2023c) score, based on their postcode of residence at the time of the court appearance. The standardised SEIFA quartiles of socio-economic status were used in analyses. Remoteness of individuals' residential area was defined based on the remoteness structure of the Australian Statistical Geography Standard, using the Accessibility/Remoteness Index of Australia Plus (ARIA+) score (ABS 2023b). ARIA+ scores were grouped into outer regional areas, remote and very remote areas, inner regional areas and major cities.

Data analysis

Quantitative data were analysed using SPSS version 28 (IBM Corp. 2021). Descriptive statistics were generated to establish the sociodemographic, clinical and forensic characteristics of the sample. The characteristics of the First Nations and non-First Nations samples were compared using univariate and multivariate logistic regression analysis, with measures of association reported as odds ratios with 95% confidence intervals. Characteristics of both the whole sample and First Nations subsample were established for those who were granted court diversion and those who were not granted court diversion, to enable formal comparisons.

Descriptive statistics were obtained for the number and proportion of individuals who reoffended during the study period. Reoffending outcomes were examined for both the non-First Nations and First Nations samples. The timing of an individual's first reoffence following diversion was also examined by calculating the time between the court finalisation date—resulting in a diversion—and the first reoffence date. The time to first reoffence was then stratified into time bands (0–30 days; 31–90 days; 91 days – 12 months; 13–24 months; 25–36 months). Only individuals with a sufficient follow-up period were included in the analysis (ie those with a post-diversion follow-up period consistent with the time bands specified). Univariate and multivariate logistic regression analysis compared the First Nations and non-First Nations samples for reoffending. The samples were then compared with those who were not granted diversion and had reoffended following the court finalisation date. Finally, predictors of reoffending after diversion were identified among the whole sample using Cox proportional hazards regression.

Research oversight and ethical approval

Ethical approval to conduct the research was provided by the Justice Health and Forensic Mental Health Network Human Research Ethics Committee (Reference: 2020/ETH03094) and the NSW Aboriginal Health and Medical Research Council (Reference: 1749/20).

Mindaribba Local Aboriginal Land Council, the legislated authority for culture and heritage in the Maitland and Lower Hunter areas of New South Wales and a social, health and learning hub for the Aboriginal community, provided cultural oversight of the research.

Results

Sample characteristics

The sample included 6,188 individuals eligible for community-based or hospital inpatient-based mental health court diversion. The average number of service contacts per individual was 2.2 (median=2.0, $SD=2.2$, range=1–32). Approximately one-quarter (27%) were recorded as having a First Nations background (Table 1). Those aged over 40 made up the largest age group (39%) and most were male (71%). Members of the sample most commonly lived in the second most disadvantaged areas (2nd SEIFA quartile (37%)) and in major cities (66%). Cohort members were most commonly diagnosed with serious mental disorders (56%), including schizophrenia and bipolar disorder. Most had committed a minor/non-violent principal offence (66%). Almost all had legal representation (91%), and three-quarters (75%) had a record of prior offending.

Table 1: Sample characteristics and differences between First Nations and non-First Nations people deemed eligible for mental health court diversion

Sociodemographic, clinical and forensic characteristics	Total Sample (n=6,188)	First Nations background (n=1,655)	Non-First Nations background (n=4,533)	Unadjusted odds ratio (95% CI)	Adjusted odds ratio (95% CI)
	n (%)	n (%)	n (%)		
Age group (years)					
18–29	1,997 (32.3)	628 (37.9)	1,369 (30.2)	1.62 (1.42, 1.86)	1.87 (1.62, 2.17)
30–39	1,801 (29.1)	500 (30.2)	1,301 (28.7)	1.36 (1.18, 1.57)	1.29 (1.11, 1.50)
40+	2,390 (38.6)	527 (31.8)	1,863 (41.1)	1.00 (ref)	1.00 (ref)
Sex					
Female	1,812 (29.3)	502 (30.3)	1,310 (28.9)	1.07 (0.95, 1.21)	–
Male	4,376 (70.7)	1,153 (69.7)	3,223 (71.1)	1.00 (ref)	
SEIFA quartile (missing n=228)					
4th (least disadvantage)	737 (12.4)	143 (9.1)	594 (13.5)	0.66 (0.53, 0.82)	0.81 (0.65, 1.02)
3rd	1,492 (25.0)	381 (24.3)	1,111 (25.3)	0.94 (0.80, 1.11)	–
2nd	2,167 (36.4)	624 (39.8)	1,543 (35.1)	1.11 (0.96, 1.28)	–
1st (most disadvantage)	1,564 (26.2)	418 (26.7)	1,146 (26.1)	1.00 (ref)	1.00 (ref)
Remote residential area (missing n=227)					
Outer regional/remote/very remote area	311 (5.2)	115 (7.3)	196 (4.5)	1.97 (1.55, 2.52)	2.11 (1.61, 2.75)
Inner regional	1,735 (29.1)	554 (35.4)	1,181 (26.9)	1.59 (1.39, 1.79)	1.61 (1.39, 1.86)
Major cities	3,915 (65.7)	897 (57.3)	3,018 (68.7)	1.00 (ref)	1.00 (ref)
Diagnosis (missing n=151)					
Serious mental disorder	3,387 (56.1)	911 (56.4)	2,476 (56.0)	1.12 (0.98, 1.27)	–
Personality or substance disorder	657 (10.9)	210 (13.0)	447 (10.1)	1.43 (1.18, 1.73)	1.42 (1.15, 1.74)
Common mental disorders/other disorder	1,993 (31.7)	494 (30.6)	1,499 (33.9)	1.00 (ref)	1.00 (ref)
Principal offence at court finalisation					
Minor/non-violent offence	4,080 (65.9)	1,121 (67.7)	2,959 (65.3)	1.12 (0.99, 1.26)	–
Violent offence	2,108 (34.1)	534 (32.3)	1,574 (34.7)	1.00 (ref)	–
Legal representation					
Represented	5,649 (91.3)	1,513 (91.4)	4,136 (91.2)	1.02 (0.84, 1.25)	
Not represented or unknown	539 (8.7)	142 (8.6)	397 (8.8)	1.00 (ref)	–
Prior offending					
Yes	4,666 (75.4)	1,434 (86.6)	3,232 (71.3)	2.61 (2.24, 3.05)	3.00 (2.54, 3.55)
No	1,522 (24.6)	221 (13.4)	1,301 (28.7)	1.00 (ref)	1.00 (ref)

Note: SEIFA= Socio-Economic Indexes for Areas. Adjusted odds ratios are adjusted for all other variables

Table 1 also compares the sample characteristics for First Nations and non-First Nations people in the sample. First Nations people were significantly more likely to be in the younger age categories (18–29 years or 30–39 years). They were more likely to live in outer regional, remote or inner regional areas but less likely to live in the least disadvantaged areas (4th SEIFA quartile). First Nations people were more likely have a diagnosis of personality or substance use disorders. They were also more likely to have a history of prior offending. Following adjustment for all significant covariates, all associations, apart from SEIFA, remained statistically significant.

Predictors of diversion

Table 2 presents associations between the sample characteristics and the odds of an individual being granted diversion by the magistrate. Just over half of the sample determined by SCCLS clinicians to be eligible for diversion were granted diversion (58%). First Nations people were significantly less likely to be granted diversion than non-First Nations people (49% vs 61%). Individuals were more likely to be diverted if they were female, were older, had a common mental disorder or other type of disorder, had committed a violent principal offence, had no history of prior offending, lived in less disadvantaged areas and had legal representation. After adjusting for all significant covariates, all associations, except the age group of 18–29 years, remained statistically significant.

Table 2: Associations between sociodemographic and clinical characteristics and the granting of mental health diversion among those deemed eligible for diversion

Sociodemographic, clinical and forensic characteristics	Diverted (<i>n</i> =3,582)	Not diverted (<i>n</i> =2,606)	Unadjusted odds ratio (95% CI)	Adjusted odds ratio (95% CI)
	<i>n</i> (%)	<i>n</i> (%)		
First Nations background				
Yes	814 (22.7)	841 (32.3)	0.62 (0.55, 0.69)	0.70 (0.62, 0.79)
No	2,768 (77.3)	1,765 (67.7)	1.00 (ref)	1.00 (ref)
Age group (years)				
18–29	1,141 (31.9)	856 (32.8)	0.87 (0.77, 0.98)	0.88 (0.76, 1.01)
30–39	995 (27.8)	806 (30.9)	0.81 (0.71, 0.91)	0.86 (0.76, 0.99)
40+	1,446 (40.4)	944 (36.2)	1.00 (ref)	1.00 (ref)
Sex				
Female	1,142 (31.9)	670 (25.7)	1.35 (1.21, 1.51)	1.31 (1.16, 1.48)
Male	2,440 (68.1)	1,936 (74.3)	1.00 (ref)	1.00 (ref)
SEIFA quartile (missing <i>n</i> =228)				
4th (least disadvantage)	451 (12.9)	286 (11.7)	1.25 (1.04, 1.49)	1.25 (1.04, 1.51)
3rd	865 (24.7)	627 (25.6)	1.09 (0.95, 1.26)	-
2nd	1,319 (37.6)	848 (34.6)	1.23 (1.08, 1.41)	1.27 (1.11, 1.46)
1st (most disadvantage)	873 (24.9)	691 (28.2)	1.00 (ref)	1.00 (ref)

Table 2: Associations between sociodemographic and clinical characteristics and the granting of mental health diversion among those deemed eligible for diversion (cont.)

Sociodemographic, clinical and forensic characteristics	Diverted (n=3,582)	Not diverted (n=2,606)	Unadjusted odds ratio (95% CI)	Adjusted odds ratio (95% CI)
	n (%)	n (%)		
Remote residential area (missing n=227)				
Outer regional/ remote/very remote area	191 (5.4)	120 (4.9)	1.12 (0.88, 1.41)	–
Inner regional	1,016 (29.9)	719 (29.3)	0.99 (0.88, 1.11)	–
Major cities	2,302 (65.6)	1,613 (65.8)	1.00 (ref)	–
Diagnosis (missing n=151)				
Serious mental disorder	2,051 (58.6)	1,336 (52.7)	1.10 (0.98, 1.23)	–
Personality or substance disorder	288 (8.2)	369 (14.6)	0.56 (0.47, 0.67)	0.65 (0.54, 0.78)
Common mental disorders/other disorder	1,163 (33.2)	830 (32.7)	1.00 (ref)	1.00 (ref)
Principal offence at court finalisation				
Minor/non-violent offence	2,108 (60.9)	1,900 (72.9)	0.58 (0.52, 0.65)	0.59 (0.53, 0.67)
Violent offence	1,402 (39.1)	706 (27.1)	1.00 (ref)	1.00 (ref)
Legal representation				
Represented	3,316 (92.6)	2,333 (89.5)	1.46 (1.22, 1.74)	1.50 (1.24, 1.81)
Not represented or unknown	266 (7.4)	273 (10.5)	1.00 (ref)	1.00 (ref)
Prior offending				
Yes	2,512 (70.1)	2,154 (82.7)	0.49 (0.44, 0.56)	0.54 (0.47, 0.62)
No	1,070 (29.9)	452 (17.3)	1.00 (ref)	1.00 (ref)

Note: SEIFA= Socio-Economic Indexes for Areas. Adjusted odds ratios are adjusted for all other variables

Table 3 presents associations between sample characteristics and the odds of an individual being granted diversion by a magistrate for the First Nations subsample. First Nations people were more likely to be diverted if they were female, were diagnosed with a common mental disorder/other disorder, had committed a violent principal offence, had no history of prior offending and lived in less disadvantaged areas. All significant covariates, except for prior offending, remained statistically significant after adjustment.

Table 3: Associations between sociodemographic and clinical characteristics and the granting of mental health diversion among cohort members with a First Nations background

Sociodemographic, clinical and forensic characteristics	Diverted (<i>n</i> =814)	Not diverted (<i>n</i> =841)	Unadjusted odds ratio (95% CI)	Adjusted odds ratio (95% CI)
	<i>n</i> (%)	<i>n</i> (%)		
Age group (years)				
18–29	297 (36.5)	331 (39.4)	0.82 (0.65, 1.03)	–
30–39	241 (29.6)	259 (30.8)	0.85 (0.66, 1.08)	–
40+	276 (33.9)	251 (29.8)	1.00 (ref)	–
Sex				
Female	283 (34.8)	219 (26.0)	1.51 (1.23, 1.87)	1.38 (1.11, 1.73)
Male	531 (65.2)	622 (74.0)	1.00 (ref)	1.00 (ref)
SEIFA quartile (missing <i>n</i>=89)				
4th (least disadvantage)	84 (10.6)	59 (7.6)	1.94 (1.32, 2.85)	2.05 (1.38, 3.05)
3rd	200 (25.2)	181 (23.4)	1.51 (1.14, 1.99)	1.50 (1.12, 2.00)
2nd	333 (41.9)	291 (37.7)	1.56 (1.21, 2.00)	1.56 (1.21, 2.02)
1st (most disadvantage)	177 (22.3)	241 (31.2)	1.00 (ref)	1.00 (ref)
Remote residential area (missing <i>n</i>=89)				
Outer regional/remote/very remote area	59 (7.4)	56 (7.3)	1.03 (0.70, 1.52)	–
Inner regional	282 (35.5)	272 (35.2)	1.02 (0.82, 1.26)	–
Major cities	453 (57.1)	444 (57.7)	1.00 (ref)	–
Diagnosis (missing <i>n</i>=78)				
Serious mental disorder	481 (62.0)	446 (55.7)	1.02 (0.82, 1.28)	–
Personality or substance disorder	61 (7.9)	133 (16.6)	0.44 (0.31, 0.62)	0.46 (0.32, 0.65)
Common mental disorders/ other disorder	234 (30.2)	222 (27.7)	1.00 (ref)	1.00 (ref)
Principal offence at court finalisation				
Minor/non-violent offence	525 (64.5)	596 (70.9)	0.75 (0.61, 0.92)	0.75 (0.60, 0.93)
Violent offence	289 (35.5)	245 (29.1)	1.00 (ref)	1.00 (ref)
Legal representation				
Represented	753 (92.5)	760 (90.4)	1.32 (0.93, 1.86)	–
Not represented or unknown	61 (7.5)	81 (9.6)	1.00 (ref)	–
Prior offending				
Yes	688 (84.5)	746 (88.7)	0.70 (0.52, 0.93)	0.75 (0.55, 1.02)
No	126 (15.5)	95 (11.3)	1.00 (ref)	1.00 (ref)

Note: SEIFA= Socio-Economic Indexes for Areas. Adjusted odds ratios are adjusted for all other variables

Patterns of reoffending

Among the sample of individuals deemed eligible for diversion, the rate of reoffending during the study period was 43 percent. Table 4 presents the reoffending outcomes according to diversion status and First Nations background. Those who were granted diversion had a lower rate of reoffending than those who were not diverted, among both First Nations (54% vs 63%) and non-First Nations (34% vs 44%) people. The most common type of reoffence was minor/non-violent among both First Nations and non-First Nations people, including both those diverted and not diverted. By the end of the follow-up period (36 months), non-diverted First Nations people had a higher rate of reoffending than diverted First Nations people (56% vs 45%). This pattern was also observed for non-First Nations people (38% vs 26%).

Table 4: Reoffending outcomes for First Nations and non-First Nations people, by diversion status

Reoffending outcome	First Nations background (n=1,655)		Non-First Nations background (n=4,533)	
	Diverted	Not diverted	Diverted	Not diverted
	n=814 (49.2%)	n=841 (50.8%)	n=2,768 (61.1%)	n=1,765 (38.9%)
	n (%)	n (%)	n (%)	n (%)
Reoffending over total period of observation				
Yes	443 (54.4)	533 (63.4)	928 (33.5)	784 (44.4)
No	371 (45.6)	308 (36.6)	1,840 (66.5)	981 (55.6)
Type of first reoffence among those who reoffended				
Minor/non-violent reoffence	337 (76.1)	411 (77.1)	661 (71.2)	587 (74.9)
Violent reoffence	106 (23.9)	122 (22.9)	267 (28.8)	197 (25.1)
Time between court finalisation date and first reoffence (mutually exclusive groups)				
0–30 days (n=6,188)	57 (7.0)	55 (6.5)	94 (3.4)	78 (4.4)
31–90 days (n=6,182)	62 (7.6)	78 (9.3)	90 (3.3)	106 (6.0)
91 days – 12 months (n=6,168)	151 (18.6)	217 (25.8)	268 (9.7)	264 (15.0)
13–24 months (n=5,847)	60 (7.4)	77 (9.2)	178 (6.4)	146 (8.3)
25–36 months (n=5,153)	37 (4.5)	46 (5.5)	97 (3.5)	73 (4.1)
Time between court finalisation date and first reoffence (cumulative percentage)				
0–30 days (n=6,188)	57 (7.0)	55 (6.5)	94 (3.4)	78 (4.4)
31–90 days (n=6,182)	119 (14.6)	133 (15.8)	184 (6.6)	184 (10.4)
91 days – 12 months (n=6,168)	270 (33.2)	350 (41.6)	452 (16.3)	448 (25.4)
13–24 months (n=5,847)	330 (40.5)	427 (50.8)	630 (22.8)	594 (33.7)
25–36 months (n=5,153)	367 (45.1)	473 (56.2)	727 (26.3)	667 (37.8)

Note: Only those with sufficient follow-up time are included in each analysis

Predictors of reoffending

Table 5 presents the results of Cox proportional hazards regression analyses for any reoffending among the study cohort. The univariate analysis found individuals had a lower rate of reoffending if they had been diverted. First Nations people had higher rates of reoffending following diversion. Younger age (18–29 years and 30–39 years) and being male were also significantly associated with reoffending. Individuals living in inner regional areas had lower rates of reoffending than those living in major cities.

Individuals diagnosed with a serious mental disorder or personality disorder had higher rates of reoffending than those diagnosed with common mental disorders/other types of disorders. Individuals had higher rates of reoffending if they had committed a minor/non-violent principal offence and had a prior offence.

The inclusion of all significant covariates in the same multivariable model revealed a similar pattern of statistically significant results, except for offence type and having a serious mental disorder, factors which were no longer significantly associated with reoffending.

Table 5: Incidence of reoffending among those with First Nations and non-First Nations background, by sociodemographic, clinical and forensic characteristics

Sociodemographic, clinical and forensic characteristics	First offence after finalised court appearance (n)	Reoffence rate per 100 person-years	Unadjusted hazard ratio (95% CI)	Adjusted hazard ratio (95% CI)
First Nations background				
Yes	976	20.27	1.98 (1.83, 2.14)	1.72 (1.58, 1.87)
No	1,712	8.96	1.00 (ref)	1.00 (ref)
Diversion status				
Not diverted	1,317	14.78	1.51 (1.40, 1.63)	1.28 (1.18, 1.38)
Diverted	1,371	9.21	1.00 (ref)	1.00 (ref)
Age group (years)				
18–29	958	13.76	1.52 (1.38, 1.66)	1.61 (1.46, 1.78)
30–39	885	13.02	1.51 (1.37, 1.65)	1.38 (1.25, 1.53)
40+	845	8.41	1.00 (ref)	1.00 (ref)
Sex				
Male	2,013	12.24	1.31 (1.20, 1.43)	1.23 (1.12, 1.35)
Female	675	9.17	1.00 (ref)	1.00 (ref)
SEIFA quartile				
4th (least disadvantage)	321	12.97	1.07 (0.94, 1.22)	–
3rd	670	12.17	1.09 (0.98, 1.21)	–
2nd	902	10.19	0.94 (0.85, 1.04)	–
1st (most disadvantage)	677	11.19	1.00 (ref)	–
Remote residential area				
Outer regional/remote/ very remote area	132	9.39	0.85 (0.71, 1.02)	–
Inner regional	707	9.38	0.82 (0.76, 0.90)	0.78 (0.71, 0.85)
Major cities	1,731	12.42	1.00 (ref)	1.00 (ref)

Table 5: Incidence of reoffending among those with First Nations and non-First Nations background, by sociodemographic, clinical and forensic characteristics (cont.)

Sociodemographic, clinical and forensic characteristics	First offence after finalised court appearance (n)	Reoffence rate per 100 person-years	Unadjusted hazard ratio (95% CI)	Adjusted hazard ratio (95% CI)
Diagnosis				
Serious mental disorder	1,499	11.40	1.20 (1.10, 1.31)	1.03 (0.94, 1.13)
Personality or substance disorder	355	17.23	1.63 (1.44, 1.85)	1.31 (1.15, 1.49)
Common mental disorders/ other disorder	769	9.61	1.00 (ref)	1.00 (ref)
Principal offence at court finalisation				
Minor/non-violent offence	1,846	11.95	1.18 (1.09, 1.29)	1.08 (0.99, 1.17)
Violent offence	842	10.08	1.00 (ref)	1.00 (ref)
Legal representation				
Represented	2,418	11.47	0.93 (0.82, 1.06)	–
Not represented or unknown	270	9.93	1.00 (ref)	–
Prior offending				
Yes	2,309	14.18	2.50 (2.24, 2.78)	2.21 (1.96, 2.48)
No	379	5.04	1.00 (ref)	1.00 (ref)

Discussion

Mental health court diversion is a key tool for addressing the mental health needs of people in contact with the criminal justice system and for reducing the likelihood of repeated justice contact—particularly for First Nations people, who have experienced rising rates of hyper-incarceration. The current study aimed to explore relative rates, predictors and outcomes of mental health court diversion for First Nations people, given concerns that they may face barriers to access and poorer post-diversion outcomes.

Analysis of the NSW SCCLS dataset confirmed that First Nations people were significantly less likely to be granted diversion than non-First Nations people, despite all those in the cohort being deemed eligible for diversion by mental health clinicians. Just under half (49%) of eligible First Nations people were granted diversion, compared with 61 percent of non-First Nations people. This finding is consistent with previous research (Albalawi et al. 2019; Macdonald et al. 2024; Soon et al. 2024, 2018) and builds on the evidence by further finding that the significant association persisted in multivariable analysis when adjustment was made for key potential confounding variables, including sex, socio-economic index, diagnosis type, the principal offence leading to the diversion application and prior offending. First Nations people may face barriers to mental health diversion for a variety of reasons, including having a history of criminal convictions, a lack of access to programs and services, distrust of legal systems (Australian Institute of Health and Welfare 2013), and the large volume of cases that magistrates and the Aboriginal Legal Service are required to deal with (Baldry et al. 2015).

It is useful to place these findings about access to mental health court diversion for First Nations people in the context of the wider criminal justice system. In New South Wales, First Nations people make up 31 percent of people in prison but accounted for only 27 percent of those deemed eligible for diversion by the SCCLS and 23 percent of those ultimately granted diversion. The underrepresentation of First Nations people among those granted Local Court mental health diversion is also consistent with previous research focused on the NSW forensic mental health system more generally (Dean et al. 2023; McEntyre et al. 2024). Research conducted by Dean and colleagues (2023) found that First Nations people in New South Wales were also less likely to be diverted to the forensic mental health system from the higher courts through a finding of ‘not guilty by reason of mental illness’ for a serious offence.

Among First Nations people identified in the SCCLS as eligible for diversion, some groups were more likely to be granted diversion than others. Specifically, First Nations people were more likely to be granted diversion if they identified as female, lived in less disadvantaged areas and had a diagnosis of a common mental disorder or a disorder other than a personality, substance use or serious mental disorder. First Nations people were also more likely to be granted diversion if they had committed a violent principal index offence and had no history of prior offending. Several of these factors have previously been identified as associated with likelihood of diversion (Albalawi et al. 2019; Macdonald & Weatherburn 2023; Soon et al. 2018). However, previous research has yielded inconsistent findings about the impact of offence seriousness on the likelihood of being granted diversion (Macdonald et al. 2024; Macdonald & Weatherburn 2023; Soon et al. 2024). In the current study, the fact that First Nations people were more likely to be diverted if they had committed a violent offence may be because magistrates perceive a clearer correlation between a defendant’s mental illness and their offending behaviour.

In the current study, the factors found to be associated with being granted diversion for First Nations people were also significantly associated with being granted diversion for the entire study sample. However, some differences were also noted. Analysis of the whole sample demonstrated that defendants were more likely to be granted diversion if they were aged 40 or over or had legal representation—again consistent with prior research (Macdonald et al. 2024; Soon et al. 2024, 2018). Defendant age and access to legal representation were not significantly associated with diversion for the First Nations subsample. It is important to note, however, that the patterns of association were similar and that the latter analyses may have been underpowered to find an effect. Interestingly, almost all First Nations defendants had access to legal representation irrespective of diversion status (ie 93% of those diverted vs 90% of those not diverted), which may indicate a strong Aboriginal Legal Service presence in the Local Courts.

Among those in the total sample of people deemed eligible for court diversion, those who were granted diversion had significantly lower rates of reoffending. Lower rates of reoffending for those diverted than those not diverted were observed among both First Nations (54% vs 63%) and non-First Nations (34% vs 44%) people. However, reoffending rates remained higher for First Nations people than non-First Nations people. For the whole sample, controlling for First Nations and diversion status, individuals were significantly more likely to reoffend if they were male, lived in a major city, had a personality or substance use disorder and had a history of prior offending. Among First Nations people who were deemed eligible for diversion and had follow-up data for at least 12 months following the last finalised court appearance, 33 percent reoffended, compared with 42 percent of those who were not granted diversion. However, the rate of reoffending, even for those diverted, was still greater for First Nations than non-First Nations people.

The findings of this study confirm the effectiveness of diversion in reducing rates of reoffending. Clearly, however, there are disparities in access to diversion, and diversion is currently not as effective for reducing reoffending for First Nations people as for non-First Nations people. The specific needs of First Nations people with mental illness are not being adequately met by current criminal justice and health service responses. To address this disparity in access and outcomes and to sustain a significant reduction in prisoner numbers, the co-design and implementation of culturally safe and evidence-based diversion policies and programs is urgently needed. Policies and programs should acknowledge the ongoing impacts of colonisation, systemic racism and other socio-economic factors on First Nations people's health and wellbeing and should highlight the importance of partnership, collaboration and empowered decision-making. The eligibility for mental health diversion should be applied broadly, to ensure that diversion is accessible for First Nations people with prior contact with the criminal justice system. Treatment plans for First Nations people should incorporate a holistic approach to care and treatment, including referrals to culturally appropriate and responsive services and strategies to maintain connections to family, carers and community. The recruitment of First Nations workers, including mental health clinicians and liaison officers in courts, should also be prioritised, alongside ongoing education and cultural competency training for all non-First Nations staff working with First Nations people. Further research should be conducted to evaluate the effectiveness of the SCCLS and to examine the medium- and long-term outcomes for First Nations people who are diverted.

Limitations

Several limitations should be considered when interpreting the study findings. Data were limited to those recorded in the SCCLS dataset and BOCSAR ROD, meaning that post-diversion outcomes beyond further criminal justice contact could not be determined. Future research may wish to consider First Nations people's experiences of other post-diversion outcomes, including contact with health services. The limitations of relying on administrative data to identify First Nations individuals should also be noted, because First Nations background is typically under-reported in these datasets (Nelson et al. 2020). The study also relied on a dichotomised 'prior offending' variable that did not account for offence severity or the length of the person's involvement with the criminal justice system. Finally, given that this study focused on the NSW context and that approaches to mental health diversion differ across states and territories, the findings of the current study cannot be fully generalised to other jurisdictions.

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